



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
DIVISION OF TAXATION
One Capitol Hill
Providence, RI 02908-5800

December 8, 2003

H. Peter Olsen, Esq.
Hinckley, Allen & Snyder LLP
1500 Fleet Center
Providence, RI 02903-2393

Re: General Informational Letter
Historic Tax Credit

Dear Mr. Olsen:

On behalf of Lerner Associates, LLC, Federal Identification Number 05-0516868, you request a General Information Letter ("letter ruling") as to three issues presented by GLRI §44-33.2 and the regulations thereunder.

The Timing of the Credit

The issue is, may the assignor or assignee of Historic Structures – Tax Credit ("Credit"), take the Credit in the year that the building is placed in service? The issue can be highlighted as follows. If a development partnership places a rehabilitated structure in service in 2003 and in 2004 sells the Credits to a third party, can the purchaser of those Credits utilize them against its tax liability (in 2003)?

R.I.G.L. §44-33.2-3(b) provides that the credits shall be allowed "for the taxable year in which such certified historic structure or an identifiable portion of the structure is placed in service, provided that the substantial rehabilitation test is met for such year."

R.I.G.L. §44-33.2-3(b) provides, in pertinent part, that the "assignee [of the credits] may apply the tax credit against taxes imposed on the assignee until the end of the tenth (10th) calendar year after the year in which the substantially rehabilitated building is placed in service or until the full credit assigned is used, whichever occurs first."

Response:

The response to the question posed is answered in the affirmative.

The Use of the Credits for Estimated Taxes

The next issue presented is whether a taxpayer or an assignee can use the tax credits to pay its estimated taxes (i.e., as a method of payment).

On behalf of your client, you have presented an Internal Revenue Service ruling in which it was held that the Rhode Island historic preservation investment tax credit as evidenced by the certificate, constituted property "for federal income tax purposes." Since the credits are transferable and can be used to offset the taxpayer's state income taxes, such use constitutes a payment of state taxes for federal income tax purposes and is an appropriate deduction for federal income tax purposes. Therefore, you assert that the use of the tax credit certificate to pay estimated taxes would seem to be an appropriate use of the certificate and in keeping with the IRS position on the nature of the credits and their status as property.

Response:

RIGL §44-33.2-3(d)(1) provides that the tax credits may be used to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed pursuant to chapters 11, 12, 13 (other than the tax imposed under §44-13-13), 14-, 17 or 30 of title 44. There is no provision which allows for the use of the credits for estimated taxes.

However, Rhode Island follows IRS guidelines relating to itemized deductions taken and allowed on a federal return. Therefore, any portion of itemized deductions allowed on an individual federal personal income tax return will be allowed for Rhode Island purposes.

Multiple Transfers of the Tax Credit

In asking how many times an unused tax credit certificate can be assigned you state the following:

Pursuant to GLRI §44-33.2-3(d) a taxpayer "eligible" for the credits may assign, transfer or convey the credits, in whole or in part. Therefore, as long as a taxpayer is "eligible" for the credits and hasn't used the credits, he/she or it are [sic] able to assign them. Therefore, an assignee is an "eligible" taxpayer able to assign the credits. Article VII, Section C of the amended and restated final rules and regulations provides that "an assignable historic preservation investment tax credit certificate may be assigned to any person, . . .". In Article II of the regulations, paragraph 7, an "assignee" is defined as "an Initial Assignee or any other person to whom the historic preservation income tax credit is assigned ...". The statute and the regulation clearly anticipate multiple assignments. Particularly, this is indicated by the plain language of the regulations.

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Response:

As you note, a taxpayer "eligible" for the tax credits may assign, transfer, or convey the credit in whole or in part, by sale or otherwise. . .

The term "eligible for a credit" indicates, however, that the taxpayer has to have some type of entitlement to a credit as opposed to someone who has just purchased an existing credit. In addition, a close reading of the regulation, particularly Articles II paragraph 7 and Article VII, Section C indicates that the word "assigned" as used therein is used interchangeably with the term allocated. It is the Division's position that a Historic Tax Credit may be allocated (in conformance with generally accepted accounting principles and federal income tax rules) any number of times through a tiered ownership interest of a project that incurs qualified rehabilitation expenditures but that the credit may be sold just once. An entity purchasing a credit may be able to use the credit but was never eligible for the credit.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Gary Clark", written in a cursive style.

R. Gary Clark
Tax Administrator

RGC:cap

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